

G

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

INALFA ROOF SYSTEMS, INC.,
a Michigan corporation,

Case

Plaintiff,

v.

Hon.

PNA MOLDING INC.,
a foreign corporation,

Defendant.

DECLARATION OF THOMAS D. TOCCO

STATE OF MICHIGAN)
)
) SS.
COUNTY OF OAKLAND)

THOMAS D. TOCCO, declares and says:

1. I am the Vice President of Purchasing, North America for INALFA ROOF SYSTEMS, INC. ("INALFA"), plaintiff in the above-captioned matter. I have been designated by INALFA for the purpose of executing this declaration, having personal knowledge of the facts herein set forth and if called as a witness would be competent to testify as the same.

2. INALFA has issued purchase orders (or “Price Books”) to PNA MOLDING INC. (“PNA”) for the purchase of certain parts used by INALFA in manufacture of roof systems installed on vehicles manufactured by Ford Motor Company (“Ford”), General Motors Company (“GM”), and Stellantis N.V. (fka Fiat Chrysler Automobiles N.V. or “FCA”) (“Stellantis”). Copies of purchase orders issued to PNA are attached to the Verified Complaint as Exhibit B (shipments to INALFA Michigan plant), Exhibit C (shipments to INALFA Georgia plant), and Exhibit D (shipments to INALFA Mexico plant).

3. The purchase orders issued by INALFA to PNA state a historical record of the parts ordered from PNA, including pricing. The purchase orders also incorporate the General Terms and Conditions of Purchase of Inalfa Roof Systems Group (“Terms”) by reference. (See Verified Complaint, Exhibits B, C, and D).

4. PNA manufactured and shipped parts to INALFA in satisfaction of the purchase orders.

5. By manufacturing and shipping parts to INALFA, PNA entered into Purchase Contracts with INALFA.

6. The Purchase Contracts between INALFA and PNA are comprised of, without limitation, any purchase order, product releases issued under the purchases order, “Quality Criteria,” the Terms, and other documents specifically incorporated

into or made a part of the Purchase Contract by INALFA. (See Verified Complaint, Exhibit A, §1).

7. Releases issued by INALFA under the Purchase Contract set forth quantity and delivery dates for the ordered parts.

8. INALFA has issued to PNA releases for the manufacture and shipment of parts under the Purchase Contracts.

9. On October 11, 2021, in connection with PNA's name change from Pollmann North America, Inc., Dave Lentz, on behalf of PNA, delivered to INALFA a completed supplier information form providing updated contact information and confirmation that PNA accepted the Inalfa Terms. (See Verified Complaint Exhibit F).

10. Notwithstanding the Purchase Contracts, including releases and the Terms, on March 7, 2022, PNA notified INALFA that it would cease the production and sale of parts ordered and sold under the Purchase Contracts unless price increases were accepted and paid by INALFA. The subject parts (41 different parts in total) are identified and highlighted in the purchase orders attached to the Verified Complaint. (See Verified Complaint, Exhibits B (22 parts), C (17 parts), and D (2 parts)).

11. On April 19, 2022, PNA unequivocally declared to INALFA that it does not intend to perform under the respective Purchase Contracts and will not supply the 41 subject parts.

12. INALFA has advised PNA that it would be in breach of the Purchase Contracts and requested a retraction of its actions, but PNA has elected to remain in breach and will not manufacture and ship parts.

13. PNA has terminated supplying the 41 necessary parts to INALFA.

14. INALFA does not have an alternate supplier of the subject parts and it does not maintain a parts bank of the subject parts produced by PNA.

15. INALFA requires at least another 18-24 months in which to transition the subject parts to another supplier.

16. PNA's breach and termination of supply to INALFA of parts will cause INALFA to shut down its assembly lines for the roof systems supplied to Ford, GM, and Stellantis as follows: (i) Auburn Hills, Michigan on April 25, 2022, (ii) Cherokee, Georgia on April 26, 2022, and (iii) Mexico on May 4, 2022 (7-9 days required for shipment).

17. To avoid the shut down of the plants, parts must be shipped immediately.

18. Upon shutdown of its assembly line, INALFA will be unable to supply Ford, GM, and Stellantis, the vehicle manufacturers, with roof systems for

installation in various vehicle models, and INALFA will be in breach of its supply obligation to the respective manufacturers.

19. Moreover, INALFA's failure to make scheduled shipments will have immediate and dramatic consequences in that Ford, GM, and Stellantis production schedules will be altered and will result in a shutdown of assembly lines. These shutdowns, in turn, can cause the layoff of innumerable employees and a damage claim against INALFA that is without quantification.

20. Finally, such a shutdown by INALFA due to PNA's breach will cause INALFA incalculable damages due to its loss of goodwill and industry stature.

21. I have reviewed the Motion for Temporary Restraining Order and Preliminary Injunction for the facts stated therein and attest that they are true and accurate.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on April 22, 2022.



THOMAS D. TOCCO

4858-0383-2093, v. 1